



PATENT
886706-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: POVOLNY et al.

Art Unit: 3626

Serial No.: 09/637,138

Filed: August 11, 2000

Examiner: Alexander G. Kalinowski

Title: INTERACTIVE PATIENT-
PROVIDER DATA SYSTEM AND METHOD

DECLARATION OF FRITH MAIER UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Washington, D.C. 20231

1. I, the undersigned, am one of the named inventors in the above identified application. I am also the President of Sesame Communications (formerly known as Pt Interactive, Inc.), the assignee of the patent application.
2. This declaration is submitted in response to the Examiner's rejection of certain claims under 35 U.S.C. § 103(a) as obvious in view of Evens, Halamaka et al., Cummings, Jr., and Sackler et al. in the Office Action mailed May 25, 2005. I believe that the obviousness of the claims is rebutted by the outstanding commercial success of the invention defined by the claims. Obviousness is further rebutted by the long felt need for the invention and the copying by others of the invention.
3. Sesame Communications presently offers software services to medical and dental professionals under the names Ortho SesameSM and Dental SesameSM that are covered by the claims of the patent application. As will be further described below, the services enable doctors and dentists to significantly improve their patient communications, resulting in reduced no-shows, staff administration time savings, and significant improvements in patient satisfaction.

Serial No. 09/637,138
November 25, 2005
Page 2

4. The need for a way to improve communication between doctors and patients has long been felt in the medical industry. Doctors need a more efficient way to run their offices, to manage their appointment schedules, and share information with patients and specialists. Patients need a more efficient way to get information from their doctors, such as medical care information, billing information, and appointment schedule information. The Ortho SesameSM and Dental SesameSM services solve these problems.
5. More particularly, the Ortho SesameSM and Dental SesameSM services deliver patient information integrated from multiple medical service providers via the Internet to provide a benefit to the patient that could not be accomplished previously using traditional methods. This may be seen graphically by viewing the company website at <http://www.sesamecommunications.com/unifiedimaging/> and selecting DIAGRAM from the menu in the upper right. Note that this presentation is out of date, so the identification of the number of patients using our service and the number of dental professionals sharing images online is not accurate. Both figures have grown significantly.
6. As reflected by the graphic referenced above, a patient is always under the care of more than one provider—in the above example, a general dentist, an orthodontist and a periodontist (oral surgeons, endodontists and prosthodontists may also be involved in an interdisciplinary case). These providers' records are completely separate and not interoperable. Our services uniquely tie together the data from these disparate providers using practice management software systems that are mutually unintelligible, and create a central repository for an individual patient's treatment information, including appointment times and diagnostic records, which improves the consistency and quality of care. Because we link disparate data from multiple providers, we deliver information that was not available to patients in a traditional way.

Serial No. 09/637,138
November 25, 2005
Page 3

7. In view of my position as President of Sesame Communications, I am well aware of the products that are available for the medical records management industry in the United States. Based upon information received from my customers in the medical and my own familiarity with the industry, I am of the opinion that, prior to the introduction of the Ortho SesameSM and Dental SesameSM services, no product or service existed that solved the problem of providing efficient communication of information between doctor and patient.
8. Currently, 501,628 patients (up from 325,000 in Nov 2004) use our Ortho SesameSM and Dental SesameSM services, provided to them by the nearly 800 doctors who are our paying customers. Roughly 1,000 new patients sign up for our services every day. Approximately 10% of the orthodontists in the U.S. are paid subscribers to the Ortho SesameSM service. We generally offer customers a 30-month subscription to our services, and have found that at the end of the subscription period 92% of the customers renew their subscription. This is an outstanding retention rate that is unrivaled by most subscription-based services. By any measure, the Ortho SesameSM and Dental SesameSM services have been a tremendous commercial success.
9. We have conducted frequent surveys in order to gauge customer interest in our services and enable us to further improve the quality of our services. The surveys show overwhelmingly that patients most appreciate the ability to access their medical records, schedule their appointments, and monitor billing status and pay bills through the web browser interface. Some of the very positive customer feedback we have received can be reviewed by accessing our website at http://www.sesamecommunications.com/users_say/. I have repeated some of the customer comments below:
 - a. "My patients absolutely love Ortho Sesame. They enjoy being able to look up their insurance and other account information. Especially our Invisalign patients really think it's fun to look at their

Serial No. 09/637,138
November 25, 2005
Page 4

treatment as it unfolds and send that to their friends. It's been really beneficial to us." Dr. Michelle Fogg Neal, Kirkland WA

b. "Ortho Sesame eliminates a lot of phone calls: 'How much do I owe? Did you get my check?' Patients want the information immediately. Compared to five or ten years ago, people's perception of service has changed. If they can get the information they want from the convenience of their own home, it's a lot better than calling the office when we're closed and being frustrated because they have to wait to talk to us." Dr. Howard Kossoff, Chagrin Falls OH

c. "Our patients love the convenience of having their photos and x-rays available online." Dr. Stanley J. Robison, Frederick MD

d. "Sesame has significantly improved our practice's efficiency. My financial coordinator thanks me three or four times a day for purchasing Sesame. She'll remind me that we had twenty people who paid online last night." Dr. David Hunter, Glendale AZ

e. "Sesame is like an extra employee at the front desk. It's a very useful tool for patient communication." Dr. Neil Warshawsky, Chicago IL

f. "Ortho Sesame saves everybody time: doctor time, clinical time, front office time. It just makes our practice run more efficiently. For example, we don't have to take clinical time to show Invisalign patients their ClinCheck because they can see if from home anytime via Ortho Sesame." Dr. Edward Y. Lin, Green Bay WI

Serial No. 09/637,138
November 25, 2005
Page 5

- g. "Ortho Sesame has proved to be an important part of our communications with patients as well as our referring doctors." Dr. Mark Farina, Tampa FL
- h. "I think that patients observing their treatment online is a revolutionary idea. Sesame involves them in their treatment in a whole new way." Dr. Curtis Sapp, Olympia WA
- i. "We have had a great response about Sesame from our patients. We hear all the time that they wish their other doctors offered a service like this." Barbara Facciolla, Business Manager, office of Dr. Jon Kraut, Newton PA
- j. "In a month, we saved over 350 phone calls to the front desk, because our patients were able to check their appointment times and financial status on our web site." Dr. Barbara Hershey, Durham NC
- k. "This is a cost effective way to greatly improve the quality of my patients' experience." Dr. Mark Geller, Plano TX
- l. "I can't believe how many patients are paying online. It saves us so much time and we get paid faster." Mrs. Diane Bogdan, office of Dr. Frank Bogdan, Bayonne NJ
- m. "This is the age of computer technology, and patients love getting information online. That's how they prefer to get information today. With Sesame, I know we are doing the right things. It improves our patient satisfaction, and that excites our patients about referring their friends to us." Ms. Sandi Domdom, Business Manager, office of Dr. Herbert Hughes, Alexandria VA

Serial No. 09/637,138
November 25, 2005
Page 6

n. "Ortho Sesame saves us so many phone calls. Our front office used to be crazy with phone calls during peak times. Now it's very simple; they just go to our web site and all the information's there." Dr. David S. Ostreicher, Levittown NY

o. "I buy best-of-breed products for my practice. Sesame is it in online patient communications for orthodontists." Dr. Len Kessler, Brick NJ

10. Based upon this feedback received from our customers, it is my opinion that the commercial success of the Ortho SesameSM and Dental SesameSM services is a direct result of the characteristics of the claimed invention, specifically the ability of the patients to access their medical records, appointment scheduling data, and billing data through a secure publicly accessible network connection.
11. As further evidence of the non-obviousness of the invention, our Ortho SesameSM and Dental SesameSM services have been slavishly copied by TeleVox, a Mobile AL company. Their product T.Link is a copy of our service feature-by-feature, report-by-report, and method-by-method. Many of T.Link's interface screens are almost exact copies of our Sesame screens, with only minor semantic changes. TeleVox released T.Link in 2003—roughly three and a half years after we released our software service. Through the discovery process of a lawsuit two years ago, we obtained copies of many internal TeleVox emails documenting their process of copying our features and methods.
12. In light of the long felt need for a service to enhance communication between doctors and their patients, the immediate and widespread acceptance of the Ortho SesameSM and Dental SesameSM services by medical service providers across the country, the commercial success of these services, and the copying by others, I believe that the claims of the patent application are not obvious in view of the prior art cited in the Office Action dated May 25, 2005.

Serial No. 09/637,138
November 25, 2005
Page 7

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

 11-25-05
Frith Maier Date